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SEP 15 2005

For The Northern Mariana Islands
By _____
(Deputy Clerk)

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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE**
11 **NORTHERN MARIANA ISLANDS**

12 **ABELLANOSA, JOANNA, et.**
13 **al.,**

14 **Plaintiff,**

15 **v.**

16 **L & T INTERNATIONAL**
17 **CORPORATION,**

18 **Defendant.**

Civil Action No. 05-0010

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS**

Date: September 29, 2005

Time: 9:00 a.m.

Judge: Hon. Alex R. Munson

19
20 Plaintiffs hereby oppose Defendant's motion to dismiss the Complaint filed
21 in the above-entitled matter.

22 **STANDARD OF REVIEW**

23 Defendant moves to dismiss Plaintiffs' first, second, and seventh^{1/} causes

^{1/} The Seventh Cause of Action of the Complaint is for declaratory relief for return air fare. Defendant in its motion presented no argument or authority relative to the Seventh Cause of Action and the Court may and should deny Defendant any relief thereto.

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1 of action for failure to state a claim upon which relief can be granted. Specifically,
2 Defendant asserts that the First and Second Causes of Action should be dismissed
3 because they “rely fundamentally on the faulty legal proposition that L&T was
4 required to pay for the costs of physical exams and health clearance certificates for
5 the Plaintiffs.” See, Memorandum in Support of Motion to Dismiss at pp. 2-4.
6 Defendant further asserts that Plaintiffs’ Seventh Cause of Action should also be
7 dismissed because it “fails to meet the threshold of outrageous behavior.” Id. at
8 pp. 4-9.

9
10 In such a motion, all well-pleaded allegations of materials facts are taken as
11 true and construed in the light most favorable to the plaintiff. Roe v. City of San
12 Diego, 356 F.3d 1108 (9th Cir., 2004); American Family Association, Inc. v. City
13 and County of San Francisco, 277 F.3d 1114 (9th Cir. 2002); *see also*, Sablan v.
14 Tenorio, 4 N.M.I. 351, 355 (1996). Defendants can only prevail if Plaintiff can
15 prove no set of facts under the alleged causes of action sufficient to state a claim
16 for relief. Williamson v. General Dynamics Corp., 208 F.3d 1144, 1149 (9th Cir.,
17 2000).; *see also* Parks School of Business v. Symington, 51 F.3d 1480, 1484 (9th Cr.
18 1995); Steckman v. Hart Brewing, Inc., 143 F.3d 1293 (9th Cir. 1998). In a motion
19 to dismiss, the burden is on the movant to prove that even in light of the facts and
20 the reasonable inferences therefrom, Plaintiff’s Complaint still fails to state a valid
21 legal claim for relief. Gilligan v. Jamco Development Cor., 108 F.3d 246, 249 (9th
22
23

1 Cir. 1997) (“The Supreme Court has explained that it may appear on the face of
2 the pleading that a recovery is very remote and unlikely but that is not the test. In
3 reviewing the sufficiency of a complaint, the issue is not whether a Plaintiff will
4 ultimately prevail but whether the claimant is entitled to offer evidence to support
5 the claims.”); *see also*, Govendo v. Marianas Public Land Corp., 2 N.M.I. 482, 490
6 (1992).

8 ARGUMENTS

9 I

10 **Defendant L&T, as an employer, is required by law and contract**
11 **to pay for the costs of physical exams and health clearance**
certificates for the Plaintiffs pursuant to 3 CMC § 4438(b).

12 Defendant L&T concedes that pursuant to 3 CMC § 4438(b) “an employer
13 must cover the costs of an employees [sic] medical exam.” See, Memorandum in
14 Support of Motion to Dismiss at p. 3, line 24. Defendant, however, contends that
15 said statute is “is inapplicable to the Plaintiffs because they were not employees at
16 the relevant time.” Id. at p. 3, lines 22-23. (Emphasis added). This argument
17 simply begs the question. Notably, Defendant fails to delineate what it contends
18 to be the alluded “relevant time.” Thus, as posited by Defendant, the
19 determination of whether Plaintiffs are or were employees at the relevant times
20 presents a mixed question of law and facts. The gravamen of L&T’s argument is
21 its bare contention that “[t]herefore, under the law cited in the Complaint for the
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23

1 proposition that L&T charged an illegal fee, it is clear that each of the plaintiffs'
 2 employers prior to transfer were responsible for paying any fees for medical
 3 examinations and health clearances required by their prospective employer, L&T."

4 Id. at p. 4, lines 14-15. This supposition is unsupported and in contravention of
 5 the plain reading of the NWA. 3 CMC § 4438(b), in relevant parts, reads:
 6

7 **The secretary may require the worker, together with**
 8 **any accompanying family member, to undergo a**
 9 **physical examination in the Commonwealth**
 10 **performed by any medical physician licensed to**
 11 **practice general medicine in the Commonwealth by**
 12 **the Commonwealth Medical Professional Licensing**
 13 **Board, within 10 working days of initial entry into**
 14 **the Commonwealth of a nonresident for**
 15 **employment under this chapter or, if the worker is**
 16 **already present in the Commonwealth for some**
 17 **other purpose, within 10 working days after the**
 18 **director issues a nonresident worker identification**
 19 **certificate for the worker. * * * The cost of any**
 20 **examination of a nonresident worker shall be**
 21 **borne by the employer. * * ***

22 There are two categories of workers identified and envisioned under Section
 23 4438(b), i.e., (1) those aliens initially seeking entry for employment, and (2) those
 alien workers already present in the CNMI "for some other purpose." Section
 4438(b), thus, does not distinguish between those workers who initially came into
 the CNMI and those "already present in the Commonwealth" so far as it relates
 to the employer's responsibility of paying for the subject medical examination
 costs. For both classes of workers, 3 CMC § 4438(b), unqualifiedly provides that

1 “[t]he cost of any examination of a nonresident worker” shall be borne by the
2 employer.” The mandate of the statute and the legislative intent is thus crystal
3 clear; the statute on its face is unambiguous and is not in need of judicial
4 interpretation to reach the conclusion that the “cost of any examination of its
5 nonresident workers shall be borne by the employer.” A reasonable and logical
6 interpretation of this Code Section 4438(b) is that the person or company then
7 presenting for approval an employment application to DOL to employ (hire) the
8 potential alien worker, is the referenced “employer” to bear the examination costs
9 of its intended worker.
10

11 L&T’s attempt and argument to shift its responsibility to pay for its workers
12 statutorily required medical examinations, is disingenuous, and, in light of the
13 clarity of Section 4438(b) and the widely known practice and policy of DOL in
14 requiring the employers submitting the employment application to pay the medical
15 examination fees, frivolous and made in bad faith. See, Fed. R. Civ. P. Rule 11.
16 Notably, L&T cites no supporting case authority or other authority in support of
17 its strained and contrived proffered interpretation of the law.
18

19 Defendant L&T further attempts to find refuge in Plaintiffs’ allegations to
20 support its “not employees” theory. It asserts that Plaintiffs’ allegation in the
21 Complaint that the payment of the medical exams and health clearance fees was
22 a “condition to [Plaintiffs’] employment” and that it was “a condition to hiring,
23

1 employing and contracting of each plaintiff with L&T,” supports Defendant’s
2 position that Plaintiffs were not employees at that point in time, and therefore 3
3 CMC § 4438(b) is not applicable. Defendant alleged, in pertinent parts, as follows:

4 [A]s evident from the complaint pursuant to the
5 standards applicable to this Rule 12 motion, the
6 plaintiffs were not employees at the time L&T
7 requested them to pay for their medical exams and
8 health clearances. Plaintiffs allege that L&T required
9 “plaintiffs pay for or provide said services as condition
10 to their employment.” . . . Allegations elsewhere in the
11 complaint confirm that this was a condition precedent
12 to employment. Paragraph 15 of the Complaint
13 alleges: “Defendant L&T . . . required and demanded
14 as a condition to hiring, employing and contracting of
15 each plaintiff with L&T, that each plaintiff must
provided for and/or pay their physical examination
and health clearance fees. Implicit in this demand and
condition was that plaintiffs would not be hired unless
plaintiffs agreed to and provided for or paid for said
examination and health fees.” Because the Plaintiffs
were not employees, L&T was not required to pay for
their medical exams and/or health clearances.
(Internal references omitted) (Emphasis in original)

16 See, Memorandum at pp. 3-4, lines 24-25; lines 1-11.

17 Implicit in Defendant L&T’s ludicrous claim that “plaintiffs were not
18 employees at the time L&T requested them to pay for their medical exams and
19 health clearances” was of course its contention that L&T is or was not an
20 “employer” for purposes of 3 CMC § 4438(b). This is flawed and runs afoul of
21 the clear and plain meaning of the term “employer” under Section 4412 (h) of the
22

1 Nonresident Workers Act, 3 CMC §4411, et. seq. which provides as follows:

2 (h) "Employer" means any individual, partnership,
3 association, or corporation **hiring, employing, or**
4 **otherwise engaging for compensation** any resident
5 worker or **nonresident worker** to perform services or
6 labor within the Commonwealth, including any
7 branch, agency, or instrumentality of the
Commonwealth, but does not include the Trust
Territory of the Pacific Islands or United States
government.

8 It is notable that paragraph 15 of Plaintiffs' complaint, quoted by L&T in
9 its moving papers (i.e. "**hiring, employing and contracting**") tracked
10 substantially the same language used in defining "employer" in Section 4412 (h),
11 i.e. "**hiring, employing, or otherwise engaging for compensation.**" In any
12 event, under Section 4412(h) of the NWA, an employer includes a corporation
13 which is "**hiring ...a nonresident worker.**" Section 4412(h), read in tandem with
14 3 CMC § 4438(b), simply means that Defendant L&T, a hiring "employer", is
15 responsible for the "cost of any examination of a nonresident worker" including
16 the cost for obtaining health certificates.

17
18 The Court may take judicial notice of DOL practices and policies
19 concerning submission and processing of nonresident worker employment
20 applications, that the medical examination is a requirement and part of the hiring
21 process and the health certificate of the worker is one of the requirements to be
22 met and submitted during and for the "hiring" and "employment" of nonresident
23

1 workers. The CNMI (DOL) form called "Prescreen Checklist. Transfer.
2 Consensual/Administrative/Expiration (attached hereto as **Exhibit "A"**) shows
3 that the "Health Certificate" is one of the prescribed requirements. Davis v.
4 Bayless, 70 F.3d 367, 372 n.3 (5th Cir. 1995) ("Federal Courts are permitted to refer
5 to matters of public record when deciding [an FRCP] 12(b)(6) motion to
6 dismiss.") Under the NWA an employer or potential employer who files an
7 employment application for his prospective employee is required nonetheless to
8 pay for the application fee and medical examination of the intended worker even
9 if the employment application is denied by DOL. 3 CMC § 4438(b).

11 In any event, Defendant L&T's argument fails based on established rules
12 governing pleading requirements. The Court is invited to look into all the factual
13 allegations asserted in the Complaint and ascertain if the allegations can sustain
14 recovery on any legal theory, even if it is not the theory suggested by the pleader.
15 Fed. R. Civ. P. Rule 8. In Mcmanus v. Fleetwood Enters, Inc., 320 F.3d 545, 551
16 (5th Cir. 2003) the Court determined that "[t]he notice pleading requirements of
17 [FRCP] 8 and case law do not require an inordinate amount of detail or precision.
18 The plaintiff need not correctly specify the legal theory, so long as the plaintiff
19 alleges facts upon which relief can be granted."; *see also* Independent Enter, Inc.
20 v. Pittsburg Water & Sewer Auth., 103 F.3d 1165, 1175 (3rd Cir. 1997) ("FRCP
21 8(e)(2) permits inconsistency in both legal and factual allegations, and has been
22

1 interpreted to mean a court ‘may not construe [a plaintiff’s] first claim as an
2 admission against another alternative or inconsistent claim.”); *see also*, In re
3 Adoption of Magofna, 1 N.M.I. 449, 454 (1990) (The complaint must contain
4 either direct allegations on every material point necessary to sustain a recovery on
5 any legal theory, even though it may not be the theory suggested or intended by
6 the pleader, or contain allegations from which an inference fairly may be drawn
7 that evidence on these material points will be introduced at trial.) Similarly, in
8 Mccalden v. Cal. Library Ass’n, 955 F.2d 1214 (9th Cir. 1992), the Court held that
9 the district court’s order dismissing the complaint was error, because the plaintiff
10 “is not required to state the statutory or constitutional basis for his claim, only the
11 facts underlying it.” *Id.* at 1223. These holdings comported with the admonition
12 that courts are to construe pleadings to do substantial justice. Charfauros v. Bd.
13 of Elections, 249 F.3d 941, 956-57 (9th Cir. 2001) (*en banc*).
14

15 II

16 **Plaintiffs’ Allegations on Outrageous Conduct Sufficiently** 17 **State a Claim Upon Which Relief May Be Granted.**

18 At the outset, it should be noted that the cases cited by Defendant L&T
19 involve not Rule 12(b)(6) motion to dismiss, but Rule 56 summary judgment
20 motions. In the instant case, consideration must be given to the fact that the
21 motion to dismiss is being filed both prior to answering or any discovery.

22 In any event, Plaintiffs agree that the Court eventually must make an initial
23

1 determination as to whether reasonable men could differ on the issue of
2 outrageous conduct. However, that determination should be made after the Court
3 has had the opportunity to view all of the evidence in the case rather than on a
4 motion to dismiss. At that point, if the Court concludes that reasonable men
5 would agree that the conduct does not rise to the requisite level, then the Court
6 may dismiss it. However, at this stage of the proceedings, the Court must accept
7 all of the allegations of the Complaint as true.
8

9 In Miller v. Currie, 50 F.3d 373 (6th Cir., 1995), the district court granted
10 defendant's motion to dismiss the claim of intentional infliction of emotional
11 distress pursuant to Fed. R. Civ. P. 12(b)(6). In dismissing the claim, the district
12 court found that even if plaintiff could prove all of her allegations about
13 defendants' conduct, the actions did not rise to the level of "extreme and
14 outrageous" behavior required to successfully assert an intentional infliction of
15 emotional distress claim. On appeal, the Sixth Circuit sets out the following
16 standard in reviewing the sufficiency of a complaint:
17

18 When a federal court reviews the sufficiency of a
19 complaint, before the reception of any evidence . . . its
20 task is necessarily a limited one. The issues is not
21 whether a plaintiff will ultimately prevail but whether
22 the plaintiff is entitled to offer evidence to support the
23 claim. Indeed, it may appear on the face of the
pleadings that a recovery is very remote and unlikely
but that is not the test. Scheuer v. Rhodes, 416 U.S.
232, 236, 40 L. Ed.2d 90, 94 S. Ct. 1683 (1974). It is
not the function of the court to weigh evidence or

1 evaluate the credibility of witnesses. Cameron v. Seitz,
2 1994 WL 575446, *5 (6th Cir. 1994); instead, the court
3 should deny the motion unless it is clear that the
4 plaintiff can prove no set of facts in support of her
5 claim that would entitle her to relief. Cameron, 1994
6 WL 575446, *5 (quoting Conley v. Gibson, 355 U.S.
7 41,45-46, 2 L.Ed.2d 80, 78 S.Ct. 99. (Emphasis
8 added).

9 Miller, 50 F.3d 373, 377.

10 While noting that the detailed circumstances surrounding plaintiff's claim
11 for intentional infliction of emotional distress are not all laid out in the complaint,
12 the Sixth Circuit in Miller reversed the district court's grant of defendants Rule
13 12(b)(6) motion and reasoned as follows:

14 Nevertheless, we find that in the particular
15 circumstances of this case, the district court erred in
16 dismissing under Fed. R. Civ. P. 12(b)(6) Miller's claim
17 for intentional infliction of emotional distress. The
18 complaint alleged that on three separate occasions
19 defendants intentionally and malicious hid her mother
20 when Miller came to visit her, and on one occasion
21 caused her to be arrested when she came to visit her
22 mother. While the circumstances surrounding the
23 event s at the nursing home are, naturally, not all laid
out in the complaint, we do not agree with the district
court that Miller could not conceivably prove any set
of facts, in support of her allegations that would entitle
her to relief. It is certainly within the realm of
imagination that hiding a ninety-eight year old,
physically infirm mother from her adult daughter, and
causing the daughter to be arrested for attempting to
visit her mother, could under some set of facts
constitute "extreme and outrageous" conduct, and
present a case "in which the recitation of the facts to
an average member of the community would arose his
resentment against the actor, and lead him to exclaim,

1 ‘Outrageous!’” Yeager, 453 N.E.2d at 671 (quoting
2 Restatement of the Law 2d, Torts (1965) 71, Section
3 46, commend (d).

4 Miller, 50 F.3d 373, 378.

5 In the case at bar and contrary to Defendant L&T’s assertions, the acts and
6 conducts of L&T that could support or give rise to a finding or conclusion of
7 outrageousness are set forth and hereafter summarily outlined.

8 ■ Defendant L&T, by and through its employee
9 and agent, Baby Lopez, employed by defendant in its
10 Human Resources Department, required and
11 demanded as a condition to hiring, employing, and
12 contracting of each plaintiff with L&T, that each
13 plaintiff must provide for and/or pay their physical
14 examination and health clearance fees. . . . Id. at ¶ 15.

15 ■ As an inducement for each plaintiff agreeing to
16 pay for their said first year examination and health
17 clearance fees, Defendant L&T, by and through its
18 agent, Ms. Lopez, promised and represented to each
19 plaintiff that L&T would pay for each plaintiff’s
20 physical examination and health clearance fees,
21 beginning with their second year of employment with
22 L&T. Implicit in Lopez’ statement was that plaintiffs
23 would have and would be given employment and work
24 during their respective one (1) year contracts and that
25 thereafter plaintiffs would be renewed unless plaintiffs
26 were terminated for good cause. Id. at ¶ 16.

27 ■ Defendant L&T made the aforesaid promises
28 and representations through its agent, Ms. Lopez or
29 ratified the same for the purpose of inducing each
30 plaintiff to accept employment with and to work for
31 L&T for defendant’s benefit, and to take advantage of
32 each plaintiff’s experience, expertise, and labor. Id. at
33 ¶ 18.

1 ■ As a result of defendant's and its agent's
2 representations and promises, each plaintiff was
3 reasonably led to believe, rely on and understand that
4 they would be renewed and employed with L&T for a
5 minimum of one (1) year and that their contract would
be renewed for a second term of one year upon
expiration. Id. at ¶ 19.

6 ■ Each plaintiff accepted employment with L&T
7 in reliance upon defendant's representations and
8 implicit promise that plaintiffs would be renewed at
9 the end of their first year contract, if plaintiffs' work
performance were satisfactory and plaintiffs were not
terminated for good cause. Id. at ¶ 20.

10 ■ Based on said Defendant L&T and its agent's
11 representations and promises of continued
12 employment and employment renewal, each plaintiff
13 reasonably relied thereon and were led to believe that
they would be renewed and employed with L&T for a
minimum of one (1) full year. Id. at ¶ 21.

14 ■ Certain of the plaintiffs in reliance on said
15 representations and promises of L&T and its agents,
16 paid for both their physical examination and health
clearance fees in reliance on and believing their
employment would be for a full year's work. Id. at ¶
22.

17 ■ Certain of the plaintiffs, in order to obtain
18 employment with L&T, and relying on its
19 representations and promises, paid their own physical
examination fees. Id. at ¶ 23.

20 ■ Certain of the plaintiffs, in order to obtain
21 employment with L&T were required by L&T and its
22 agents to use their then yet valid health clearance
23 certificates from their previous employment in lieu of
the employer, L&T, paying for said cost and fees. Id.
at ¶ 24.

1 ■ On information and belief, a majority of the
2 workers employed by Defendant L&T are Chinese
3 nationals and citizens but their contracts and
4 employment were and are not so conditioned on said
5 Chinese workers providing or paying for said physical
6 examination and health certificate fees, as those of the
7 plaintiffs. Furthermore, on information and belief,
8 there are no other employees of Defendant L&T
9 whose employments or contracts were and are so
10 conditioned, except for plaintiffs who are Filipinos.
11 Id. at ¶ 25.

12 ■ Each plaintiff and Defendant L&T executed
13 and entered into written employment contracts for a
14 term of one (1) year. Id. at ¶ 27.

15 ■ Under the said employment contracts,
16 Defendant prohibited each individual plaintiff from
17 “without the consent of the [L&T] in writing first
18 obtained, for a period of one year after [plaintiffs’]
19 employment ceases either by resignation, termination,
20 expiration of permit, or other causes, enter the employ
21 of or render services to any person, firm, partnership,
22 or corporation dealing in products or services which
23 compete with any products of or services of L&T or
engage in any competing business on [plaintiffs’] own
account or become interested therein as director,
principal, representative, employee or in any
relationship or capacity.” Id. at ¶ 29. (Emphasis
added)

19 ■ The said referenced employment contract(s) was
20 a form contract and, on information and belief, a
21 contract of adhesion, prepared and drafted in advance
22 by defendant and/or its counsels and presented to
23 each plaintiff on a take it or leave it basis without
negotiation. Id. at ¶ 30.

22 ■ On information and belief, defendant, as
23 required by the NWA, executed with the Director of

1 Labor, for each Plaintiff, an Employer's Non-Resident
2 Worker Agreement, to which each Plaintiff is a third-
party beneficiary. Id. at ¶ 31.

3 ■ Under the said third-party beneficiary
4 agreement, defendant shall be responsible for all
5 "expenses required by law of any nonresident worker"
which include physical examination and health
clearance fees. Id. at ¶ 32.

6 ■ The said third-party beneficiary agreement also
7 requires defendant to provide each plaintiff a
8 minimum of forty (40) hours of work per week, at all
9 times, for the duration of each Plaintiff's respective
employment contract. Id. at ¶ 33.

10 ■ Defendant L&T terminated plaintiffs *en masse*,
11 without individualized considerations of the legal
12 rights, status, and condition of each plaintiff under
13 their respective contracts, without and in
14 contravention of each plaintiff's rights to due process.
Furthermore, defendant did not consider or interview
each plaintiff about their respective qualifications for
other jobs and positions available through L&T, its
affiliate and sister companies including Tan Holdings
Corporation, and did not in good faith explore other
alternatives to firing plaintiffs. Id. at ¶ 35.

16 ■ On information and belief, Defendant L&T,
17 after plaintiffs' termination hired and brought into the
18 CNMI new Chinese workers from the People's
19 Republic of China to fill various positions in the
company (L&T), its subsidiaries, and other garment
factories affiliated with, owned or controlled by L&T.
20 Id. at ¶ 36.

21 Defendant L&T caused to be inserted, as a condition of each Plaintiff's
22 contract, a provision prohibiting each Plaintiff from working for any other
23 garment company or rendering services to any person or company dealing in

1 products or services which compete with any products of or services of L&T, for
2 a period of one year, after each Plaintiff's termination by L&T. L&T terminated
3 Plaintiffs approximately only 2 to 3 months into their one (1) year contracts and
4 reasonably knowing and being aware that each Plaintiffs, all being garment
5 workers, would by said restriction, not be able to obtain employment with another
6 garment company or service in the CNMI, and that this would cause each alien-
7 Plaintiff severe and extreme emotional distress. Said contractual provision was
8 part of Defendant L&T's contract of adhesion. Complaint, page 12 at ¶ 30.
9 Thus, when all the allegations of the Complaint are read and considered in a light
10 most favorable to each Plaintiff, especially at this prediscovery stage, it can not be
11 reasonably concluded or said that a reasonable trier of fact, after considering all
12 allegations of the Complaint, could not come to believe and decide that, given the
13 totality of the Defendant's conduct, Defendant, under the circumstances given,
14 Defendant acted shockingly and outrageously.

15
16 The above allegations, taken as true, must be considered in view of the
17 special relationship existing between Defendant and Plaintiffs as required under
18 the Restatement hereinafter discussed.

19
20 **III**
21 **Plaintiffs Meet the Required Standards Generally**
22 **for Intentional Infliction of Emotional Distress**
23 **Claims Under the Restatements.**

Plaintiffs recognize that intentional infliction of emotional distress claims

1 may be dealt with by a motion for summary judgment or by a motion to dismiss.
2 Miller v. Currie, 50 F.3d 373 (6th Cir. 1995). However, Plaintiffs contend the
3 Complaint and supporting documents thereto meets the prescribed standard for
4 such claim in the Commonwealth.

5 In Charfauros, et. al v. Board of Elections, et. al 1998 MP 16, 5 N.M.I. 188
6 (1998), the CNMI Supreme Court (1998), the CNMI Supreme Court sets out the
7 standard and test to prevail on a claim for intentional infliction of emotional
8 distress in the CNMI as follows:
9

10 “In our Commonwealth the common law is drawn
11 from the Restatements. 7 CMC § 3401... (In the
12 absence of contrary statutory or customary law this
13 ourt applies the common law as expressed in the
14 Restatements.”). . . The action asserted by Plaintiffs
is defined in the Restatement (Second) Torts, §46
(1965) (hereinafter Restatement) as “Outrageous
Conduct Causing Severe Emotional Distress,” and is,
in relevant part, as follows:

15 One who by extreme and outrageous conduct
16 intentionally or recklessly causes severe
17 emotional distress to another is subject to
18 liability for such emotional distress, and if
bodily harm to the other results from it for such
bodily harm.

19 Charfauros, 5 N.M.I. 188, 201.

20 “To maintain a cause of action for the intentional infliction of emotional
21 distress requires proof of four elements: (1) that the conduct complained of was
22 outrageous; (2) that the conduct was intentional or reckless; (3) it must cause
23

1 emotional distress; and (4) the distress must be severe.” Chaurfauros, supra.
2 (Internal citations omitted).

3 Plaintiffs, like Defendant L&T, recognize the court’s important duty to
4 guard the gateway to the cause of action for intentional infliction of emotional
5 distress. Comment h. to Restatement §46 requires the court to judge the
6 sufficiency of the conduct alleged to have caused the emotional distress before
7 allowing the case to proceed to a full trial, thusly:

8
9 It is for the court to determine, in the first instance,
10 whether the defendant’s conduct may reasonably be
regarded as so extreme and outrageous as to permit
recovery. . .

11 “In light of this gatekeeping function, Comment c. to Restatement §46
12 reminds Courts, however, that ‘the law is still in a stage of development, and the
13 ultimate limits of this tort are not yet determined.’ The cause of action is thus
14 ‘fully open to the possibility of further development of the law, and the
15 recognition of other situations in which the liability might be imposed.”
16 Charfauros, supra. (Internal citations and references omitted). “Comment h. to
17 Restatement §46, supra, goes on to further delineate the gatekeeping function:

18
19 Where reasonable men may differ, it is for the jury,
20 subject to the control of the court, to determine
21 whether, in the particular case, the conduct has been
sufficiently extreme and outrageous to result in liability.

22 The CNMI Supreme Court in Charfauros found that the acts of the
23 Commonwealth Board of Elections against Plaintiffs might be found “extreme

1 and outrageous” within the meaning of Restatement §46. The Court observed:

2 Comment d. to section 46 states that “[t]he cases thus
3 far decided have found liability only where the
4 defendant’s conduct has been extreme and
outrageous.” Comment d. goes on to say,

5 Liability has been found only where the conduct
6 has been so outrageous in character, and so
7 extreme in degree, as to go beyond all possible
8 bounds of decency and to be regarded as
9 atrocious, and utterly intolerable in a civilized
10 society. Generally, the case is one in which the
recitation of the facts to an average member of
the community would arouse his resentment
against the actor, and lead him to exclaim,
“Outrageous!”

11 This rather restrictive language of comment d., above,
12 is modified by the language of comment e. to
13 Restatement §46. Comment e. indicates that the
nature of the relation between the parties must be
factored into the judgment whether the conduct was
outrageous as a matter of law:

14 **The extreme and outrageous character of the
15 conduct may arise from an abuse by the actor of a
16 position, or a relation with the other, which gives
17 him actual or apparent authority over the other, or
a power to affect his interests. (Emphasis added)**

18 Charfauros, 5 N.M.I. 188, 202.

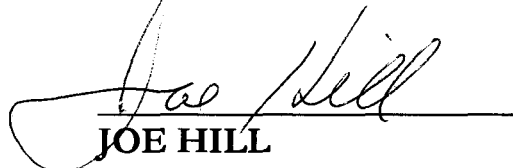
19 Comment c. to Restatement §46 finds particular importance in the case at
20 bar where by the relationship of Defendant L&T as an accepting employer,
21 Defendant possesses and wields a great deal of influence and control over the
22 Plaintiffs’s lives, employment and eligibility of these workers to remain and live
23

1 and work in the Commonwealth, thus making them particularly vulnerable to
2 abusive acts and conducts of Defendant L&T. Thus, when the special relationship
3 between Defendant and Plaintiff is factored in, it cannot, at least at this early stage,
4 be determined or said that the conduct was not outrageous as a matter of law.
5

6
7 **CONCLUSION**

8 Based on the foregoing, Plaintiffs pray that Defendant's Partial Motion to
9 Dismiss be denied in its entirety. Plaintiffs further request that the Court
10 determine Defendant's Motion to Dismiss as to Plaintiffs' First and Second
11 Causes of Action as without merit and frivolous and award Plaintiffs reasonable
12 attorney's fees and costs.

13 **SIGNED** this 15th day of September 2005.

14
15 
16 **JOE HILL**
Attorney for Plaintiffs
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DO NOT DETACH THIS SHEET FROM APPLICATION!!

Name of Employer/Agent _____

Name of Employee _____

PRESCREEN CHECKLIST

TRANSFER**CONSENSUAL / ADMINISTRATIVE / EXPIRATION****A. FOR DIVISION OF LABOR**

- ☐ Copy of CT / Administrative Order
- ☐ Original Permit / Affidavit of Permit (Notarized)
- ☐ Non-Resident Workers Affidavit with Color Photo
- ☐ Certificate of Employment (2 Yrs. Experience)
- ☐ Employment Contract
- ☐ Birth Certificate
- ☐ Marriage Certificate (if applicable)
- ☐ Police Clearance
- ☐ Health Certificate
- ☐ Copy of Passport
- ☐ Employers Agreement
- ☐ Original - Certified Job Vacancy Announcement with News Ads
- ☐ Copy of Valid Business License
- ☐ Copy of BGR & Withholding Tax (Past 4 Qtrs.)
- ☐ Original Sworn Statement of Compliance
- ☐ Original Waiver 1 to 1 20% (if applicable)
- ☐ Bank Certification
- ☐ Map to Business Establishment
- ☐ Proof of Project (6 mos. to a Year)
- ☐ Original Bond / Cash Bond
- ☐ Other Requirement as Requested
- ☐ Living Quarter or Self-Arrange Housing (Affidavit)

B. EMPLOYER'S COPY (Must be Provided)

- ☐ Copy - Nonresident Worker's Affidavit
- ☐ Copy - Employment Contract
- ☐ Copy - Employer's Agreement

☐ **ACCEPTED FOR SUBMISSION DATE** _____☐ **REJECTED FOR SUBMISSION DATE** _____**REVIEWER NAME** _____

EXHIBIT "A"